IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 448 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHAH JAGDISHCHANDRA CHANDULAL - Applicant
Versus
STATE OF GUJ - Respondent

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Appearance :
NOTICE UNSERVED for Applicant :
MR. I.M. PANDYA, LD. APP for Respondent :

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 28/07/2006

ORAL JUDGMENT

1. The petitioner had preferred this petition challenging the order of learned Sessions Judge, Mehsana dated 15/10/1994 in Criminal Appeal No.

34 of 1991 confirming the order of conviction dated 30/9/1991 passed by learned JMFC, Patan in Criminal Case No. 1663 of 1988. Initially at the admission stage learned counsel Shri. Brahmbhatt had appeared up to the admission stage and after hearing him as it appears from the record, this Court (Coram: J.M. Panchal, J) on 1/11/1994 passed following order :-

> " Rule returnable on 24/11/94. The petitioner is ordered to be released on bail on the same terms and conditions on which he was enlarged on bail by the Trial Court, on execution of fresh bonds. "

2. Thereafter time & again the matter has rotated on the board for final hearing but none has appeared for the petitioner / original accused no.1. The Vakalatnama of Shri. Brahmbhatt also indicate that he was to appear only up to admission stage. This Court, therefore, issued fresh notice to the applicant so as to accord him an opportunity vide order dated 25/7/2006 which was made returnable on 28/7/2006, i.e. today. The notice was required to be served through Ghatlodia police station on the given address in the memo of Revision Application. The police report indicate that the petitioner does not seem to be residing there and since last 2 years one Smt. Jayshreeben Dipakbhai appears to be staying and she does not know about any one

in the name of the petitioner. In view of this, this Court has no other option but to proceed with the matter on the basis of available record.

3. The case of the original accused no.1/ petitioner was that one witness Jyotikaben Mahasukhlal Modi who happen to be the niece of complainant Rasiklal came in contact with accused no.2 of Criminal Case No. 1663 of 1988 and she got introduced with present petitioner who is accused no.1 in Criminal Case No. 1663 of 1988. Prior to a month before 18/1/1988 at about 3.00 clock witness Jyotikaben along with accused no.1 were taken to a place called Kapasiwad at the place of witness Pradyuman Ambalal and there her photographs were taken numbering about 60. At that time the witness Jyotika was betrothed with one Ashokkumar Sevantilal Modi and those photographs were sent to Ashokkumar Modi by accused no.1 and Rs.25,000=00 were demanded for giving photographs and negative. This demand was made to one Nilaben. As per the case of the prosecution this was done with a view to extort money by exerting undue pressure and threat of exposing Jyotika and damaging her prestige in the society and thus he has committed offence under Section 384 and 500 of Indian Penal Code.

4. The said complaint came to be lodged and during investigation photographs etc. were recovered.

The chargesheet was filed before learned CJMFC, Patan. The charge was drawn and plea of denial was recorded. The prosecution examined witness Pradyuman Ambalal at exhibit-14, Rasiklal Chunilal at exhibit-15, Nareshkumar Babulal at exhibit-24, Nilaben Mahasukhlal at exhibit-26, Mahasukhlal Chimanlal at exhibit-27, Jyotikaben Mahasukhlal at exhibit-28, Rasulmiya Gulamhusein at exhibit-29, Ashokkumar Sevantilal at exhibit-32, Vinayak Sivram Shinde at exhibit 39. After recording further statement under section 313, learned Magistrate on 23/9/1991 convicted present petitioner for commission of offence under section 384 and 500 of IP Code and sentenced him to undergo simple imprisonment for 2 years and payment of fine of rs.500=00. This order was challenged by the petitioner in the Court of learned Addl. Sessions Judge, Mehsana in Criminal Appeal No. 34 of 1991. The Sessions Court framed 2 points for determination, namely (1) whether the order of learned Magistrate dated 30/9/1991 convicting the accused under section 384 and 500 of I.P.Code was erroneous & improper; and (2) What order. The Sessions Court has answered first point in negative and second as per his order.

5. The Sessions Court has taken note of the submission that the photographer who was responsible for taking photographs has not been arraigned in the complaint. There was no cross

examination on behalf of the accused no.1 in Criminal Case No. 1663 of 1988. The photographs at exh. 16, 17 and 18 did not appear to be obscene and therefore criminal appeal ought to have been allowed. This submission has been negatived by the lower appellate court. In respect of the submission that there was no opportunity to cross examine witness on behalf of accused no.1 has also not been accepted by the Sessions Court. It is observed that the offences have been committed in the year 1988 and the trial had proceeded in the year 1990. In this period accused ought to have engaged advocate and at the time of taking evidence of witnesses learned Magistrate has recorded that accused no.1 was not willing to cross examine the witnesses. It was open to the accused to make appropriate request for adjournment for engaging advocate and as now the judgment had been pronounced this type of submissions were not accepted by the lower appellate court. On this count the matter was not considered fit to be remanded also. The submission with regard to the photographs not being obscene was negatived on the count that the purport of ingredients of section 384 and 500 of I.P. Code is not on the point of obscenity but it is on the point to extortion on account of exerting the fear and or endangering the body or property or reputation of the party from whom the extortion is being made. The act of sending the photographs to

third party was sufficient to meet the ingredient of Section 500 of I.P. Code.

6. In this application the main contention is that as the petitioner could not defend his case properly due to his condition the conviction has been recorded. There is not a single ground raised in respect of the merits of order passed by trial court and the lower appellate court. It is only submitted that the order passed by lower appellate court and trial court being erroneous it deserve to be quashed and set aside. The petitioner appears to be enlarged on bail by this Court vide order dated 1/11/1994. Thereafter time & again attempts were made to procure his presence, but in vain. Lastly, this Court has also issued notice on 25/7/2006 it was made returnable on 28/7/2005, ie. today. The report shows that since last 2 years such a person is not residing at the given address. It appears that the petitioner seems to have not bothered to prosecute his case further. However looking to the averments made in the memo there seems to be no error calling for interference by this Court. The lower appellate court also recorded in its decision that the accuse no.1 in fact had received Rs.1000=00 towards first installment out of Rs.25,000=00 which would go to show that the delivery of money was also complete and that Rs.1000=00 can be said to be payment under extortion on account of the name

being exposed and therefore the offence is said to have been completed. It was also recorded that due to this, the betrothal of witness Jyotika had been terminated by her fiance and this was an additional loss on account of this kind of criminal activity on the part of accused no.1. Learned Magistrate convicted both the accused and gave benefit of probation to original accused no.2, whereas the accused no.1 that is present petitioner was sentenced as aforesaid.

7. In view of the aforesaid facts & circumstances and in view of the conviction recorded by learned JMFC and confirmed by lower appellate court it can well be said that no interference is called for at this stage.

8. This court has perused the original record pertaining to Criminal case No. 1663 of 1988 and noticed that the photographs can well be said to be capable of inducing and or making fiance to believe that the victim Jyotika has intimate relationship with accused no1. The accused no.1 has accepted first installment of Rs.1000=00 out of Rs.25000=00 and this fact is also proved that the engagement had been broken and the photographs were actually given to 3rd party which would attract ingredient of section 383, 384 and 500 of I.P. Code. In view of this this revision application deserve to be dismissed.

Interim relief stands vacated. Rule is discharged.

9. While issuing rule on 1/11/1994 this Court had granted bail. Now, this revision application is being dismissed, the conviction awarded by learned JMFC in Criminal Case No. 1663 of 1988 and confirmed by learned Sessions Judge in Criminal Appeal No. 34 of 1991 would stand confirmed. His bail bonds stand cancelled. The Respondent State is directed to search out petitioner / original accused no.1 and be taken in to custody to serve out the remaining period of sentence. Registry is directed to send writ to the lower court for compliance of this order.

[S.R. BRAHMBHATT, J]

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